

# **NATIONAL CAMPAIGN FOR SUSTAINABLE AGRICULTURE**

## ***Organic Committee***

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Mark Bradley, Associate Deputy Administrator  
Transportation and Marketing Program  
National Organic Program  
1400 Independence Avenue, SW, Room 4008--SO, Ag Stop 0268  
Washington, DC 20250

Via Email: [nop.livestock@usda.gov](mailto:nop.livestock@usda.gov)

**RE: Docket No. TM-06-06-PR**

Dear Mr. Bradley:

The National Campaign for Sustainable Agriculture is a national network of organizations and individuals working to develop federal agriculture policies that are economically viable, environmentally sound, humane, and just. The Organic Committee of the National Campaign brings together the interests of farmers, certifiers, farm advocates, consumers, environmental organizations, and others to support strong organic standards.

The NCSA Organic Committee appreciates the opportunity to comment on the proposed Rule regarding the National Organic Program's Revisions to Livestock Standards Based on Court Order (Harvey v Johanns) and 2005 Amendment to the Organic Foods Production Act of 1990 (OFPA).

Unfortunately, the short, 15- day comment period has been difficult for NCSA participants and other stakeholders to participate in this public process. **We therefore request an extension of the comment period for an additional 30 days.**

In general, we applaud the Department's attempt to provide consistency in the administration of the Act, but find several instances of the proposed Rule to be inconsistent and unclear. We request that the final Rule add clarity to these issues.

### **TRANSITION OF DAIRY LIVESTOCK INTO ORGANIC PRODUCTION**

The National Campaign Organic Committee supports the transitional feed language in the proposed rule. This is consistent with the November 10, 2005 Congressional Amendment to OFPA, and the petition for rulemaking filed with the agency by the Center for Food Safety, the National Campaign for Sustainable Agriculture, and others on June 22, 2005.

In previous regulation, the conversion of livestock to organic was under a "two-track" system which was confusing to understand, and therefore inconsistent in its implementation. This proposed Rule does nothing to clarify the conversion of dairy livestock to organic, and with the loss of 205.236 (a)(2)(i) due to the decision in Harvey v. Veneman, becomes less understandable. It is unclear whether, after a farm operation becomes organic, new animals must be treated organically: 1) from the last third of gestation, or 2) no later than one year prior to the production of organic milk or milk products.

With the increasing demand for organic milk, and the currently low supply, there is industry momentum to bring on organic dairy animals as fast as possible. Unclear interpretations of the Rule invite wide latitude in implementing what originally was a clear intent regarding the conversion livestock in the Final Rule.<sup>1</sup> If this correction is not made, some operators and certifying agents may interpret the rule as allowing for the continuous conversion of conventional heifers to organic production.

Without closing this loophole, animals converted this way could be treated conventionally for their first year or so of life. This would include feed made from genetically engineered soy and corn, as well as the use of antibiotics and growth hormones. This presents a contradiction to consumers' expectations. The recent NMI study commissioned by the Department notes that of organic dairy users, 87% expect no hormones, and 84% expect no antibiotics [NMI Omnibus, *Organic Dairy and the Role of Pasture*, March 2006, p. 7].

A contradiction also exists as to the actual practices of organic dairy farmers regarding the raising of organic heifers. In the past, organic dairy farmers have typically created a relatively closed system where they raise their own animals on their organic farm. New entry organic farmers, attempting to meet the supply gap are attempting to bring on new animals as fast as possible, and are resorting to whatever is out there. Mis-interpretations of the Rule by both farm operations and certifiers has encouraged this practice.

This has created a situation where there actually is little market for organic heifers in some parts of the country. Because producers feel that they can bring on conventional heifers with a 12-month organic management prior to milking, the market in organic heifers has not developed. Organic heifers do not (at this time) always bring a premium in the marketplace, but they cost more to raise. In order for this market to develop, and for there to be more organic stock available, the regulations must be clear that organic heifers are required in every case, except for the one-time initial conversion of a dairy operation.

## **RECOMMENDED ACTION:**

### **Clarify Origin of Livestock. Section 205.236 Should Read:**

#### **§ 205.236 Origin of livestock.**

**(a) Livestock products that are to be sold, labeled, or represented as organic must be from livestock under continuous organic management from the last third of gestation or hatching: Except, That:**

**(1) \*\*\* as is.**

**(2) Dairy animals – conversion of herds. Milk or milk products must be from animals that have been under continuous organic management beginning no later than 1 year prior to the production of the milk or milk products that are to be sold, labeled, or represented as**

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<sup>1</sup> From the section of the Preamble to the Final Rule, "Livestock Production – Changes Based on Comments": "After the dairy operation has been certified, animals brought on to the operation must be organically raised from the last third of gestation," and "By creating an ongoing allowance for using nonorganic feed on a certified operation, this provision would have undermined the principle that a whole herd conversion is a distinct, one-time event"; Final Rule, 12/21/2000; p. 85-86).

organic. Except, That, crops and forage from land, included in the organic system plan of a dairy farm, that is in the third year of organic management may be consumed by the dairy animals of the farm during the 12 month period immediately prior to the sale of organic milk and milk products.

(3) Dairy animals -- replacement stock. Once an operation has been certified for organic dairy production, all dairy animals, including all young stock whether subsequently born on or brought onto the operation, shall be under organic management from the last third of the mother's gestation.

(4) Breeder Stock....

## **SYNTHETIC SUBSTANCES**

The NCSA Organic committees disagree with the Departments decision that rule-making is not required on the issue of the use of synthetic substances in or on processed products, because that section of the Congressional Amendment to OFPA “fixed” what Harvey had undone. Yet, the original regulation required that all synthetic materials be reviewed by the NOSB, and the amendment only refers to “ingredients,” leaving a large loophole of synthetic substances which may not have to be reviewed by the National Organic Standards Board under the regulation as written. Other than ingredients, substances include “food contact substances” and other processing aids.

In fact, the Department has a “Policy Statement” still posted which specifically exempts the entire class of FDA “Food Contact Substances” from any NOSB review.<sup>2</sup> It was noted in response papers of Harvey v. Veneman that the current Food Contact Substance policy is not final and “is part of an ongoing deliberation about how the Act and Rule operate.”<sup>3</sup> Yet it appears on the website with no such descriptor, and its information has been recently used by the Department in producing memos to the same affect to potential petitioners of substances.

For example, at the November 2005 NOSB Ecolab spokesperson Cayce Warf testified that EcoLab did not intend to petition NOSB for the use of acidified sodium chlorite and other antimicrobial rinses, because such rinses are food contact substances that do not show up as an ingredient in the final product, and are therefore outside the scope of NOP and NOSB authority. In his testimony, he refers to a memo from Barbara Robinson as evidence that NOP has no authority over food contact substances.<sup>4</sup>

Finally, the Congressional Amendment left out the pre-Harvey list of criteria for the evaluation of “synthetic substances”. Criteria for evaluation of synthetics are used for synthetic materials being reviewed for both crops and livestock, and are necessary as well for processing substances. The

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<sup>2</sup> For the list of Food contact Substances: [www.cfsan.fda.gov/%7Edms/opa-fcn.html](http://www.cfsan.fda.gov/%7Edms/opa-fcn.html)

NOP Policy statement: [www.ams.usda.gov/nop/NOP/Policy Statements/Synthetic Substances.html](http://www.ams.usda.gov/nop/NOP/Policy%20Statements/Synthetic%20Substances.html)

<sup>3</sup> Brief of Appellee at 23-24, n. 11, Harvey v. Veneman, 396 F.3d 28 (1st Cir. 2005) (No. 04-1379)

<sup>4</sup> Page 76 of the PDF version of the November 16, 2005 NOSB transcript

pre-Harvey criteria for evaluating synthetic substances in 205.600(b) should be revised to incorporate ingredients, processing aids, and adjuvants.

#### **RECOMMENDED ACTIONS:**

- 1) The Department must close the loophole on synthetic substances by mandating that the National Organic Standards Board must review **ALL** synthetic materials used in organic processing, including all synthetic substances as well as ingredients.
- 2) The Department should specifically withdraw the Policy Statement of December 12, 2002, entitled: *Synthetic Substances Subject to Review and Recommendation by the National Organic Standards Board When Such Substances are Used as Ingredients in Processed Food Products*. In addition, notice of this withdrawal and an explanation of Recommendation 1), above, should be posted and sent to ACAs.
- 3) The Department should make the criteria in §205.600(b) apply to all synthetic substances being reviewed for inclusion on the National List.

Rewrite §205.600(b) to read:

“(b) In addition to the criteria set forth in the Act, any synthetic substance used in organic processing will be evaluated against the following criteria:”

#### **“COMMERCIAL AVAILABILITY”**

The Amendment to OFPA gave the Secretary the ability to “develop emergency procedures for designating agricultural products that are commercially unavailable in organic form for placement on the National List for a period of time not to exceed 12 months.”. These products make up only the “less than 5%” category of an organic processed product.

Yet, it is unclear when and how these emergency procedures should be implemented. If the Department is intending to use this new authority granted in the Congressional Amendment, then rulemaking should occur to clarify under what conditions, and specifying the criteria for the Secretary to use to determine which agricultural products [in the 5% portion of an organic processed product] can be declared “Commercially Unavailable.” This rulemaking should include a minimum 60-day comment period.

Thank you for the opportunity to comment. We reiterate our request for a 30-day extension to this comment period in order for others to participate in this process.

Respectively submitted,

Liana Hoodes, Organic Policy Coordinator,  
NCSA Organic Committee